

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Cambridge Electric Light Company,)	
Commonwealth Electric Company, Boston)	
Edison Company,)	
NSTAR Gas Company, d/b/a NSTAR)	

D.T.E. 03-47

**ATTORNEY GENERAL'S MOTION FOR CLARIFICATION, OR IN THE
ALTERNATIVE, FOR RECONSIDERATION**

I. INTRODUCTION

Pursuant to 220 C.M.R. § 1.11(10) and Department of Telecommunications and Energy (“Department”) precedent, the Attorney General seeks clarification or, in the alternative reconsideration of the Department’s October 31, 2003 decision (“Order”). The Attorney General asks the Department to clarify the amount of pension expense already included in rates for Cambridge Electric Light Company, Commonwealth Electric Company, Boston Edison Company and NSTAR Gas Company (“Company” or “NSTAR”), and whether the dollars collected from customers through the new pension reconciliation mechanism shall be contributed to the pension trust fund. The Attorney General also asks the Department to clarify that NSTAR may not recover from ratepayers prepaid balances from the freeze period.

II. STANDARD OF REVIEW

A. Reconsideration

A motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. *Massachusetts Electric Company*, D.P.U. 90-261-B, p. 7 (1991). The Department also may grant reconsideration of previously decided issues when extraordinary circumstances dictate that the Department take a

fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. *North Attleboro Gas Company*, D.P.U. 94-130-B, p. 2 (1995); *Boston Edison Company*, D.P.U. 90-270-A, pp. 2-3 (1991). A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. *Commonwealth Electric Company*, D.P.U. 92-3C-1A at 3-6 (1995).

B. Clarification

The Department may clarify previously issued orders when an order is silent as to the disposition of a specific issue requiring determination in the order or when the order contains language that is so ambiguous as to leave doubt as to its meaning. *Boston Edison Company*, D.P.U. 92-1A-B, p. 4 (1993). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. *Boston Edison Company*, D.P.U. 90-35-A, p. 3 (1992), citing *Fitchburg Gas & Electric Light Company*, D.P.U. 18296/18297, p. 2 (1976).

III. ARGUMENT

A. Amount Of Pension Costs In Rates

The Company has proposed, and the Department approved, a reconciling mechanism that allows NSTAR to collect additional amounts from customers above the level currently in rates. *See e.g.*, M.D.T.E. No. 109 §1.01 (“Purpose. The purpose of the Pension/PBOP Adjustment Mechanism is to . . . reconcile pension and PBOP expense amounts included in rates with the total expense amounts booked by the Company pursuant to SFAS 87 and SFAS 106.”); Exh. NSTAR-JJJ, p. 3 (same). The Department’s Order, however, is silent on the issue of the actual amount of pension expense found in this proceeding to be included in the rates of the four

NSTAR distribution companies.¹ In order to make the new reconciling tariffs function as designed, the Department should clarify with specific findings and analysis the level of pension costs currently recovered in base rates for each of the four NSTAR distribution companies.

B. Funding Of The Pension Trusts

The Department's Order is silent of the issue of whether NSTAR will be required to deposit all the additional funds collected through the new reconciling mechanism into pension fund. The Company based its request for a general increase in rates in this proceeding on the desire "to provide pension benefits and post-retirement benefits other than pensions ("PBOPs") to its *employees*" and on the notion that increased expenses from pensions may cause harm to the Company, and then eventually to customers. Exh. NSTAR-JJJ, p. 2 (emphasis added). Consequently, the Company should use the amounts collected with the new reconciling mechanism only to fund the pension trust. This restriction would allow employees, as well as customers, to participate fully in any benefits that may accompany improvements to the stock market and a rise in interest rates. Allowing the Company to use the tariff as a method to collect funds for other purposes would invite misuse of this device. In order for the reconciling

¹ The Department does refer to certain orders, *see* Order, p. 45, n. 33, but they do not contain cost of service findings sufficient to determine the level of pension expense in rates. *See Boston Edison Company*, D.P.U. 92-92, p. 14 (1992) (Department approval of "a level of revenues."); *Cambridge Electric Light Company/Commonwealth Electric Company*, D.P.U. 87-2C, 88-2C, 89-2C, 90-2C, 91-2C, 92-2C, 93-2C, 94-2C 87-3C, 88-3C, 89-3C, 90-3C, 91-3C, 92-3C, 93-3C, 94-3C (1995) (a comprehensive resolution of Commonwealth Electric cost of service, rates, accounting matters and Generating Unit Performance Review issues which required \$2,700,000 annual retail base rate reduction); *Commonwealth Gas Company*, D.P.U. 91-60, p. 3 (1991)(Department approval of "a level of revenues.")

mechanism to meet the pension obligations to the Company's workers, the Department should clarify that all the funds recovered through the new tariffs must be deposited into the pension trust.²

C. The Definition Of Prepaid Expenses

The Department explicitly denied the Company the opportunity to recovery pension and PBOP costs in excess of those amounts recovered in rates during the four year rate freeze accompanying the merger that formed NSTAR. Order, pp. 31-33 *citing* NSTAR, D.T.E. 99-19 (1999). The Department then stated: "we direct the Companies to exclude the first eight months of 2003 from the Reconciliation Adjustment." The Department should clarify that the Company should not recover additional pension and PBOP costs for any part of the four year merger rate freeze, not just for 2003.

² See *Cambridge Electric Light Company / Commonwealth Electric Company*, D.T.E. 99-90-C, p. 83 (2001) (requiring the Companies to deposit that portion of the transition charge proceeds associated with FAS 87 and FAS 106 obligations into trust funds designated for those purposes). See also *Boston Edison Company, D.P.U. 96-23 (1998)* (approving "Restructuring Settlement Agreement", p. 233, requiring the Company to make cash contributions to the respective trust funds for the FAS 106 and FAS 87 obligations as rapidly as permitted under tax law up to the level of revenues collected for this purpose) "Any revenues associated with these obligations that cannot be immediately funded shall be put into a separate account on the books to be reserved with carrying charges at the rate provided in Section 1.2 until tax deductible funding becomes possible." Restructuring Settlement Agreement, p. 233.

IV. CONCLUSION

The Department should allow this motion and clarify, or in the alternative reconsider, the issues raised in this motion and grant the relief requested.

Respectfully Submitted,

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